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INJURIES RESULTING FROM FRIGHT OCCASIONED BY AN INVASION OF THE PRIVACY OF A DWELLING HOUSE.—With the great extension of the law of tort during recent years, the plaintiff is today allowed a recovery in many cases which, a few years ago, would hardly have been considered as conferring any right of action. This sort of legal growth is well illustrated in the case of Bouillon v. Laclede Gaslight Co.[1] recently decided. The facts were as follows:

The planitiff, a married woman, occupied a flat in an apartment house, and was sick in bed in charge of a nurse. A collector of the defendant company presented himself at the door of the flat, which seems to have been in close proximity to the plantiff's bedroom, and demanded admittance in order to read the gas meter. The nurse, who had opened the door, informed him that they did not use gas, that there was no meter in the apartment, that the plaintiff was very ill and that he, the collector, could not come in. The latter then used loud and profane language and tried to force his way into the flat, but finally desisted and went away. Shortly after this occurrence, the plaintiff became much worse and suffered a miscarriage, directly traceable, as shown by the testimony, to the fright occasioned by the conduct of the defendant's agent. A suit for damages was brought and a verdict for the plaintiff was finally had, after a reversal of the judgment of the trial court.

The facts set forth in the above summary of the case show the conduct of the defendant's servant to have been utterly unwarranted and indefensible, and to say that the plaintiff, who through the mental shock received therefrom suffered so seriously physically, could not have recovered, would have seemed hard indeed. No judge or jury, considering the matter from a merely moral standpoint, without reference to the technical rules of law would hesitate to award a woman substantial damages, who had passed through such an experience. But law, as has many times been pointed out, is not morals, and in consequence, is it possible to uphold the verdict given in the case under discussion?

While the general opinion seems to be that damages cannot be recovered for mere fright suffered through the defendant's negligence, a much closer question is presented where physical injury has followed that fright. Courts have held opposite views upon this point, but probably the more usual one is that no recovery is possible in the case of mere negligence[2] where there has been no physical impact. But it would seem that a different question is presented where in the place of being merely negligent, the defendant has acted with a wanton disregard of the plaintiff's rights, and has wilfully intended some sort of harm or fright to the latter. As was said in Spade v. Lynn & B. R. Co.,[3] in denying the right to recover —the case being one where the mere negligence of the defendant had

[1] 129 S. W. 401 (1910).

[2] Mitchell v. Rochester R. Co., 151 N. Y. 107 (1896).

[3] 168 Mass. 285 (1897).

resulted in plaintiff's physical injury through fright * * *. "It is hardly necessary to add that this decision does not reach those classes of action where an intention to cause mental distress or hurt the feelings, is shown * * * Nor do we include cases of acts done with gross recklessness or carelessness, showing utter indifference to such consequences when they should have been in the actor's mind."

Admitting, then, that many courts are prone to allow recovery in this class of case where physical injury results from fright following wanton reckless conduct on the part of the defendant, can the award in the present case be upheld?

It has always been a fundamental rule of law that to ground an action some legal right of the plaintiff's must have been invaded. And yet what right was invaded in this case? Evidently it was not her right to the peaceful enjoyment of real property, for from the report, the apartment does not seem to have been in her name. Yet without having title she could not well found an action of trespass *quare clausum fregit,* and recover consequential damages for her personal suffering. Nor was her right to personal security violated. The court distinctly states that there was no assault on the plaintiff, and without an assault an action would hardly have lain under the strict rules of the old pleading. And yet to a modern mind it seems but just that she should be compensated.

What, then, is the result in a case of this sort? While the desire to do justice is strong, the court is hampered by legal rules. It says consequently that the defendant was a trespasser, and continues that "the defendant is not to escape responsibility, for as a trespasser in her home he should respond for all the consequences traceable to his wrong as the proximate cause thereof." Do they not class him as a trespasser and allow this action in order to fix on him a responsibility which he would otherwise escape? Is he really a technical trespasser here in the sense of strict pleading any more than the defendant in Newell v. Whitcher,[4] was a trespasser when he entered his servant's bedroom? Yet the court in that case considered him as such "under the circumstances of the case" and allowed the action of trespass *q. c. f.* to be brought by the servant. Many other instances of this sort could be cited[5],[6] where the court apparently feeling that there was a right and yet not possibly a legal right of the plaintiff's invaded, has looked around for some foundation upon which to permit an action for damages for injuries resulting from fright due to the invasion of this "right."

Does not this mean then, in the final analysis, that common justice recognizes in such circumstances that the inmates of a dwelling are entitled to protection from intrusion, and that such protection is as much due to all the members of the family, as to the owner of the premises? If this is the true doctrine of these cases,

[4] 53 Vt. 589 (1881).

[5] Watson v. Dilts, 116 Ia. 249 (1902).

[6] Brounback v. Frailey, 78 Ill. App. 262 (1898).

it probably will not be long before the courts will yield to the feelings of the community, and instead of searching for means to bring this new basis of action within the old forms, will admit freely that, as was said by the learned judge in his opinion in this case, "The privacy of the home enjoys the sanctity of the law," and will find a direct method of enforcing this right to privacy.

G. K. H.